NO. 82-6556

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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

DOUGALS EDWARD GERTZLER,

Petitioner,

-vs-

STATE OF ARIZONA,

Respondent.

ON WRIT OF CERTIORARI TO THE ARIZONA SUPREME COURT

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Are petitioner's convictions in California for nine counts of murder valid?

2. Is the finding of two additional aggravating circumstances upon resentencing a violation of double jeopardy?

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STATEMENT OF THE CASE

On November 3, 1973, petitioner and Willie Luther Steelman murdered Michael and Patricia Sandberg in Tucson, Arizona. They then went to California where they murdered numerous other people. There they were arrested and subsequently pled guilty to murdering nine people in Lodi, California. They were returned to Arizona, where they were both convicted of the Sandberg killings. State v. Gretzler, 126 Ariz. 60, 612 P.2d 1023 (1980); State v. Steelman, 120 Ariz. 301, 585 P.2d 1213 (1978). Both were ordered resentenced pursuant to State v. Watson, 120 Ariz. 441, 586 P.2d 1253 (1978), cert. denied, 440 U.S. 924 (1979). Prior to resentencing, petitioner contended that his California convictions were invalid, and could not be used to support a sentence of death. The Arizona Supreme Court rejected this claim. State v. Superior Court (Gretzler), 128 Ariz. 583, 627 P.2d 1081 (1981). Petitioner was resentenced to death upon a finding of four aggravating circumstances, two of which had not been found at the first sentencing. State v. Gretzler, ___ Ariz. ___, 659 P.2d 1 (1983). On April 15, 1983, petitioner filed the instant petition for writ of certiorari.

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1257(3).

ARGUMENTS

I

THE PRIOR CALIFORNIA CONVICTIONS ARE NOT INVALID.

Petitioner contends that his convictions for nine counts of murder in California are invalid. In Burgett v. Texas, 389 U.S. 109, 88 S.Ct. 258, 19 L.Ed.2d 319 (1967), this Court held that a state cannot use an invalid prior conviction to support guilt or enhance punishment for another offense. 389 U.S. at 115. Petitioner has attacked the validity of his California convictions, but has failed to get that state to set them aside. State v. Superior Court (Gretzler), supra, 128 Ariz. at 585, 627 P.2d at 1083. California therefore still considers these convictions valid. Arizona has held that the guilty pleas were in compliance with Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969), and therefore not void. State v. Superior Court (Gretzler), supra, 128 Ariz. 585, 627 P.2d at 1083. The convictions used to enhance petitioner's sentence are therefore valid.

II

THE FINDING OF TWO ADDITIONAL AGGRAVATING CIRCUMSTANCES ON RESENTENCING DID NOT RESULT IN DOUBLE JEOPARDY.

Petitioner contends that the finding of two additional aggravating circumstances at his resentencing amounts to double jeopardy. This same argument was raised in Knapp v.

Cardwell, 667 F.2d 1253 (9th Cir.), cert. denied, ___ U.S. ___, 103 S.Ct. 473, 74 L.Ed.2d 621 (1982), and rejected there. 667 F.2d at 1263-65. Petitioner's claim is therefore without merit.

CONCLUSION

Because petitioner has failed to show a violation of any constitutional right, this Court should deny the petition for certiorari.

Respectfully submitted,

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A F F I D A V I T

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

CRANE McCLENNEN, being first duly sworn upon oath, deposes and says:

That he served the attorney for the petitioner in the foregoing case by forwarding one (1) copy of RESPONSE TO PETITION FOR WRIT OF CERTIORARI, in a sealed envelope, first class postage prepaid, and deposited same in the United States mail, addressed to:

CARY SANDMAN
McCARTHY & SANDMAN
124 W. Cushing Street
Tucson, Arizona 85701
Attorney for PETITIONER

this 5th day of May, 1983.

Crane McClennen
CRANE McCLENNEN

SUBSCRIBED AND SWORN to before me this 5th day of May, 1983.

Elizabeth J. Bendle
NOTARY PUBLIC

My Commission Expires:

July 17, 1986

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